

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEATRIZ CORONA CORTES, *individually
and on behalf of all others similarly situated*,
et al.

Plaintiffs,

-against-

CORNED BEEF EXPRESS, LLC et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: 12/17/2021

20-cv-3546 (MKV)

ORDER DENYING MOTION
FOR DEFAULT JUDGMENT

MARY KAY VYSKOCIL, United States District Judge:

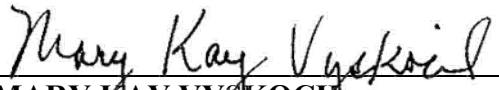
On December 3, 2021, the Court held a hearing on Plaintiffs' motion for a default judgment [ECF No. 44]. For all of the reasons stated on the record at the hearing, the motion is DENIED. As the Court explained, it is not clear that the individual defendants were ever properly served with the complaint. If Plaintiffs' counsel maintains that such service was proper, by January 14, 2022, counsel must file an affidavit explaining the bases for believing that each individual defendant resided at the address where the complaint was delivered and that service was otherwise proper under Rule 4 of the Federal Rules of Civil Procedure and New York Law. In the alternative, Plaintiffs must properly serve the individual defendants, and file proof of such service on ECF, by January 14, 2022. Moreover, Plaintiffs are not entitled to default judgment against the individual defendants if Plaintiffs fail to state claims against the individual defendants as employers. *See Irizarry v. Catsimatidis*, 722 F.3d 99, 104–105 (2d Cir. 2013) (explaining the test for whether a defendant is an employer). As the Court also explained on the record at the hearing, Plaintiffs failed to properly serve the defendant companies with the default judgment motion and the Court's Order scheduling the hearing.

Plaintiffs are on notice that failure to take all steps necessary to move this case towards a resolution might result in dismissal with prejudice for failure to prosecute.

The Clerk of Court is respectfully directed to terminate the motion at docket entry 44.

SO ORDERED.

Date: December 17, 2021
New York, NY



MARY KAY VYSKOCIL
United States District Judge